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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

ALI BOURESLAN and
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Petitioners,

v.

ARABIAN AMERICAN OIL COMPANY, *et al.*,
Respondents.

On Writs of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

BRIEF OF *AMICI CURIAE* RULE OF LAW COMMITTEE AND THE NATIONAL FOREIGN TRADE COUNCIL, INC. IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether, in light of relevant principles and rules of international law, Title VII should be construed to apply to local conduct occurring within the territory of another sovereign state.

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BRIEF OF *AMICI CURIAE* RULE OF LAW COMMITTEE AND THE NATIONAL FOREIGN TRADE COUNCIL, INC. IN SUPPORT OF RESPONDENTS

The Rule of Law Committee and the National Foreign Trade Council, Inc., submit this *amici curiae* brief in support of respondents Aramco and Aramco Services Company. Pursuant to Rule 37, counsel for *amici*, Steptoe & Johnson, has obtained and filed with the Clerk of the Court the written consent of Petitioners and Respondents to submit this brief.

INTEREST OF *AMICI CURIAE*

The Rule of Law Committee ("ROLC") is an informal, voluntary association of legal representatives from several major U.S.-based multinational corporations * with

* The current members are Bank of America, Bechtel Group, Inc., Chase Manhattan Bank, Chevron Corporation, E.I. Du Pont de

long-standing, worldwide business interests. The ROLC, which has been in existence for over 20 years, has frequently expressed its views on questions of United States and international law to courts of the United States, committees of Congress, and agencies of the Executive Branch.

The National Foreign Trade Council, Inc. ("NFTC"), is a New York not-for-profit corporation with more than 500 member firms concerned with international trade and investment. Interests of NFTC members account for over seventy percent of all U.S. exports and U.S. direct private investment abroad.

As the representatives of multinational companies which employ thousands of persons outside the United States, *amici* have a direct interest in the question presented to the Court. Whether and in what manner U.S. laws, such as Title VII of the Civil Rights Act of 1964, may apply to business activities occurring within another country is vitally important for American companies that operate in many countries having diverse social, cultural, and economic norms and that are subject primarily to local policies and laws.

Amici agree with *amici curiae* for petitioners that Title VII's antidiscrimination provisions reflect a deep, moral value of the United States. Unlike other *amici*, however, the ROLC and NFTC respectfully submit that this moral value is not a legally compelling consideration to the question before the Court. The question is not whether the values inherent in Title VII warrant its application to activities occurring abroad; rather, the fundamental question is whether, in light of relevant principles and rules of international law, Title VII should

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Nemours & Company, Exxon Corporation, Texaco Inc., and Mobil Oil Corporation. At the time of the alleged conduct giving rise to the complaint, affiliates of four ROLC members, namely Chevron, Exxon, Mobil Oil, and Texaco, held the stock of Arabian American Oil Co. ("Aramco").

be construed to apply to local conduct occurring within the territory of another sovereign state.

The Fifth Circuit, on two occasions, accurately noted that the sovereignty of other nations must be respected and that laws reflecting one state's values and norms, however important at home, cannot always be extended worldwide simply on the basis of nationality without infringing on the sovereignty of states having territorial jurisdiction. *Boureslan v. Aramco*, 857 F.2d 1014, 1017 (5th Cir. 1988), *adopted en banc*, 892 F.2d 1271, 1272-73 (5th Cir. 1990), *cert. granted*, 111 S. Ct. 40 (1990).

Amici ROLC and NFTC respectfully submit this *amicus* brief to set forth views to the Court on the principles and rules of international law which limit the authority of a state to exercise jurisdiction in the circumstances of this case.

SUMMARY OF ARGUMENT

This Court has long recognized that "[i]nternational law is part of our law, and must be ascertained and administered by the courts of justice. . . ." *The Paquete Habana*, 175 U.S. 677, 700 (1900). *Amici* ROLC and NFTC respectfully submit that extraterritorial application of Title VII would violate international law as expressed in international conventions, in principles of customary international law, and as evidenced in the practice of other countries in enacting domestic laws concerned with employment discrimination. Furthermore, even under the more recent and flexible approach to jurisdiction formulated in the Restatement (Third) of the Foreign Relations Law of the United States (1987) [hereinafter Restatement 3d] it would be unreasonable, and, therefore, violate international law, for the United States to assert jurisdiction over such conduct. The potential conflict with international legal principles and with the laws of foreign sovereigns, as well as the dramatic practical complexities of applying Title VII abroad, compel an af-

firmance of the Fifth Circuit decision. Moreover, the decision in the Fifth Circuit is consistent with the doctrine of international comity.

"The respect for the right of nations to regulate conduct within their own borders is a fundamental concept of sovereignty that is not lightly tossed aside." *Boureslan v. Aramco*, 892 F.2d 1271, 1272. Starting from this basic tenet of international law, the Fifth Circuit considered whether Congress had addressed "foreign sovereignty concerns" which would be implicated if the United States attempted to regulate local conduct occurring within the territory of another sovereign nation. It found that Congress had not addressed these concerns and, sitting as a panel and *en banc*, held that neither the text nor the legislative history of Title VII reflected the "necessary clear expression of congressional intent to extend its reach beyond our borders." *Id.* at 1274.

Respect for foreign sovereignty forms the basis of the long-established canons of construction which *amici* respectfully suggest should underlie the Court's analysis: first, the presumption against the extraterritorial application of a statute absent a clear expression of congressional intent, *Argentine Republic v. Amerada Hess Shipping Co.*, 109 S. Ct. 683, 691 (1989); *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 285 (1949);[1] second, the precedent that "an act of congress ought never to be construed to violate the law of nations if any other possible construction remains . . . ." *McCulloch v. Sociedad Nacional de*

[1] *Amici* will not elaborate further on the absence of any evidence of such intent in this case. This point has been thoroughly briefed in other submissions to the Court. *Amici* endorse the opinion of the Fifth Circuit that the negative inference—read into the statute by Petitioners based on the so-called alien employment exemption—is insufficient evidence of congressional intent to warrant extraterritorial application of a complex statute concerned with employment practices and based on U.S. social values. Indeed, the requisite intent must be express.

Marineros de Honduras, 372 U.S. 10, 21 (1963) (quoting *Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804)); *see also* Restatement 3d § 114. These canons reflect the recognition that both international law and relations depend, in large part, on the concept of reciprocity—that is, the positions adopted by the United States regarding questions of jurisdiction may be reciprocally adopted by other countries *vis-a-vis* the United States. Thus, before it can be found that Congress acted in a manner inconsistent with the international principle of national sovereignty, Congress must clearly express its intention.

It is clear from international legal sources and state practice that employment relations are a matter left to regulation by each individual state within its sovereign jurisdiction. Many of the international conventions, declarations, and codes cited by other *amici* contain provisions prohibiting discrimination in employment. However, these same sources acknowledge the vast social, religious, and economic differences between nations and urge that action to prevent discrimination be taken by each nation within the confines of its sovereignty.

Moreover, review of the employment discrimination statutes collected by the International Labour Organization[2] demonstrates that the prevailing practice is not to reach conduct abroad and that some statutes expressly state that the law of the host country is exclusive, thereby precluding regulatory jurisdiction by other sovereigns

[2] The International Labour Organization is a specialized agency of the United Nations, comprised of representatives of workers, employers, and governments drawn from U.N. member states. It is especially concerned with issues of social justice pursued from a labor point of view and "has played a prominent and pioneer role in standard-setting" with regard to the interactions of governments, employers, and workers. I. Brownlie, *Basic Documents on Human Rights* 257 (1971). Among the many Conventions that the ILO has drafted as part of the process of establishing international labor standards is Convention 111 discussed *infra* section I(C).

over local conduct. In the instant case, the Saudi Labor and Workmen Law of 1969[3] governs all labor contracts and labor disputes in Saudi Arabia. *See* discussion, *infra*, at sections I(D) and II(B). Furthermore, several domestic tribunals have found that employment discrimination statutes do not apply extraterritorially. This is consistent with U.S. law as reported in the Restatement 3d,[4] which provides that the exercise of jurisdiction based on the "nationality principle" is limited and that the host state has jurisdiction to prescribe over predominantly local activities, such as industrial and labor relations. *Id.* § 414, comment c, at 271. *See also id.* §§ 402, at 237-42, 403, at 244-48.

Thus, extraterritorial application of U.S. law in these circumstances would clearly be contrary to international law. Absent an explicit congressional intent to apply U.S. law extraterritorially, the canons of construction, based on respect for international law, national sovereignty, and conflict avoidance in international relations, require restraint. Moreover, an analysis based on the factors prescribed in the Restatement 3d demonstrates that it would be "unreasonable," and therefore violate international law, for the United States to exercise jurisdiction in the instant case before this Court.[5]

On a more practical level, as local work forces throughout the world are comprised of employees from many different countries, the exercise of extraterritorial juris-

[3] Relevant portions of Saudi Arabia's Labor and Workmen Law are reproduced in appendix B.

[4] The Restatement 3d "reflect[s] [the] development in the law as given effect by the United States courts." Restatement 3d § 401, at 231 (Introductory Note).

[5] Even if the Court were to find that it would be "reasonable" for both the United States and Saudi Arabia to exercise jurisdiction over employment practices in Saudi Arabia, comity would require that the United States refrain from its exercise in this instance in favor of the territorial state. *See infra*, section III.

diction based on nationality, without clear guidance from lawmakers, risks significant disruption and reciprocal disrespect for the national sovereignty of our own country.

For these reasons, *amici* respectfully urge the Court to affirm the Fifth Circuit's decision below.

ARGUMENT

I. THE EXTRATERRITORIAL APPLICATION OF TITLE VII IN THIS CASE WOULD BE CONTRARY TO ESTABLISHED INTERNATIONAL LAW PRINCIPLES AND RULES OF JURISDICTION

Petitioner Equal Employment Opportunity Commission ("EEOC") argues that the extraterritorial application of Title VII to U.S. employers and employees overseas "does not give rise to significant conflicts with international norms or the law of foreign states." Brief for Petitioner EEOC, at 25. Citing *Skiriotes v. Florida*, 313 U.S. 69, 73 (1941), the EEOC asserts that the U.S. nationality of the parties confers prescriptive jurisdiction on the United States and that established limitations on extraterritorial regulation of U.S. nationals in a sovereign foreign country should be discounted. Brief for Petitioner EEOC, at 26.

Amici ROLC and NFTC respectfully submit that the EEOC ignores the extent of conflict involved in the extraterritorial application of Title VII. Such application would be inconsistent with established principles and rules governing the exercise of jurisdiction under international law.

A. International Law is "Part of Our Law" and Must be Applied by this Court

U.S. courts have long recognized that "[i]nternational law is part of our law, and must be ascertained and administered by the courts of justice. . . ." *The Paquete*

Habana, 175 U.S. at 700. "From the beginning, the law of nations . . . was considered to be incorporated into the law of the United States without the need for any action by Congress or the President, and the courts, State and federal, have applied it and given it effect as the courts of England had done." Restatement 3d § 111, at 41 (Introductory Note). *See also id.* § 111, at 42-43; Henkin, *International Law as Law in the United States*, 82 Mich. L. Rev. 1555 (1984).

B. Principles and Rules of International Law Limit a State's Jurisdiction to Regulate the Activities of its Nationals Abroad

The rules governing jurisdiction to prescribe law have been followed by U.S. and foreign tribunals and have "emerged as principles of customary [international] law." Restatement 3d § 401, at 231 (Introductory Note). Under the rules governing jurisdiction to prescribe, "[t]erritorality is considered the normal, and *nationality an exceptional*, basis for the exercise of jurisdiction." *Id.* § 402, comment b, at 238 (emphasis added); *Laker Airways, Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 935 (D.C. Cir. 1984) ("Territorality, not nationality, is the customary and preferred base of jurisdiction."); I Brownlie, *Principles of Public International Law* 299 (1979) (observing that especially in civil cases "courts are often reluctant to assume jurisdiction in cases concerning a foreign element and adhere to the territorial principle").

The corollary to this rule of jurisdiction is that the "nationality principle" must defer to the "territoriality principle," which authorizes the territorial state to regulate persons, things and activities *within its borders*. *See Steele v. Bulova Watch Co.*, 344 U.S. 280, 285-86 (1952) ("'[T]he United States is not debarred by any rule of international law from governing the conduct of its own citizens upon the high seas or even in foreign countries *when the rights of other nations* or their nationals *are not infringed*.'" (emphasis added) (quoting *Skiriotes v. Florida*, 313 U.S. 69, 73 (1941))); Mann, *The Doctrine of Jurisdiction in International Law*, 111 Recueil des Cours 23, at 50 (Hague Academy of International Law, 1964) ("[T]he mere fact that a person not resident in the legislating State is its national does not necessarily make him subject to such State's jurisdiction in all respects . . . . [T]he rights of other nations or their nationals must not be infringed.").

In the case presently before the Court, Saudi Arabia's regulatory jurisdiction is predicated on the parties being present and the conduct occurring within Saudi Arabia. Indeed, Saudi Arabian law by its terms applies exclusively to employment contracts and disputes occurring within its territory. *See* discussion, *infra*, sections I(C) and II(B). Here, United States jurisdiction is prescriptive, based solely on the parties' nationality. Yet, nationality alone is not a sufficient basis in all cases on which to prescribe rules to govern activities in a foreign country. *See* Restatement 3d § 402, comment a, at 238. In fact, jurisdiction based on the citizenship of a natural person has been exercised only "sparingly." Restatement 3d § 402, at 241 (Reporters' Note 1).[6]

As to the exercise of jurisdiction based on the nationality of a juridical person, or corporation, it too is limited. Such jurisdiction is not to be exercised when there are strong corporate connections with another state (for example, a state where the corporation has its head-

[6] Only in limited circumstances, such as in matters of allegiance (*e.g.*, military service, participation in judicial proceedings in the home country, or taxation of income earned by citizens abroad) has it been found reasonable for conduct to be regulated based on the nationality principle. Because such matters bear an exceptionally close relationship to the citizen and his state, decision-makers have found the nationality principle acceptable in such circumstances. And, it should be noted, these matters normally do not give rise to conflict with the policy or law of the territorial state.

quarters or conducts its operations) and the exercise of jurisdiction by the state of incorporation would be "unreasonable." *See, e.g.*, Restatement 3d § 403(1), at 244, discussed *infra* at section II. In this case, respondent Aramco for many years maintained its corporate headquarters in Saudi Arabia and conducted all its business activities in that country. *See* discussion, *infra*, section II(B).

The exercise of jurisdiction based on nationality (*i.e.*, the place of incorporation) has been limited to activities

> related to international transactions such as export and import, foreign exchange and credits, and transborder investment; but *not generally over predominantly local activities, such as industrial and labor relations*, health and safety practices, or conduct related to preservation or control of the local environment.

Restatement 3d § 414, comment c, at 271 (emphasis added). Alleged discrimination in an employer-employee relation occurring within Saudi Arabia cannot be viewed as an "international transaction," but is more properly considered a local labor activity that may not, absent a clear Congressional intent to the contrary, be regulated by the United States.

C. International Conventions, Declarations, and Codes Regarding Employment Relations Recognize the Principle of Territorial Sovereignty and the Primacy of Local Regulation

International agreements are sources of international law. Restatement 3d § 102(1)(b), at 24. *See also id.* §§ 102(3), at 24, 102, comment i, at 27. As agreements among nations, they impose obligations upon the parties. Moreover, certain multilateral conventions or codes can be evidence of or reflect customary international law which, as such, is binding on all states whether or not they are parties. *See* Restatement 3d § 102(3), at 24

(international agreements may "lead to the creation of customary international law when such agreements are intended for adherence by states generally and are in fact widely accepted"). Both conventional and customary international law have equal authority. *Id.*, comment j, at 27.

Beginning with the creation of the United Nations pursuant to its Charter, an international consensus has emerged against many forms of discrimination, including discrimination on the basis of race, gender, religion, and nationality.[7] The existence, however, of international norms against such conduct is the result of international cooperation and concerted action, rather than unilateral application of domestic laws across national borders.

The United Nations Charter stresses "international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." U.N. Charter, art. 1(3). In implementing these Charter provisions, the United Nations serves as a "center for *harmonizing the actions of nations* in the attainment of these common ends." U.N. Charter, art. 1(4) (emphasis added). Thus, although the United Nations Charter seeks to promote an international consensus against discrimination, it also recognizes the bedrock international

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[7] *See, e.g.*, International Covenant on Civil and Political Rights, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 52, 55-56, U.N. Doc. A/6316 (1966); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 49-50, U.N. Doc. A/6316 (1966); International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1965); Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 195, U.N. Doc. A/34/46 (1979).

legal principle of national sovereignty and the need to harmonize standards while respecting such sovereignty.

Multilateral instruments addressing corporate conduct in employment have clearly delineated the relationship between the international consensus against discrimination and the scope of domestic legislation. While specifying international standards for corporate conduct and protection of workers, these documents have also stressed the importance of respecting differences among nations and the sovereignty of each country. Contrary to the erroneous suggestion of *amicus* Lawyers Committee that national sovereignty is now of minimal importance,[8] these documents make clear that the issue of sovereignty is not losing its vitality or disappearing under the influence of increasing international transactions and multinational entities; rather, sovereignty is consciously being protected.

For example, the Discrimination (Employment and Occupation) Convention (No. 111), 362 U.N.T.S. 31 (1958), of the International Labour Organization ("ILO") addresses employment discrimination directly and stresses that the issue of discrimination is an international concern to be addressed on a *national basis*. Convention No. 111 is intended to protect workers against discrimination. Nonetheless, it declares that "[e]ach Member for which this Convention is in force undertakes to declare and pursue a *national policy* designed to promote, *by methods appropriate to national conditions and practice*, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof." *Id.* at art. 2 (emphasis added). The ratification of this convention by 111 countries[9] reflects the

[8] Brief of *amicus* Lawyers' Committee For Civil Rights Under Law, at 16-18.

[9] The 111 countries that have ratified the Convention include not only Saudi Arabia, but also such countries as France, Germany, Italy, and the U.S.S.R. The United States has ratified neither the Discrimination (Employment and Occupation) Convention nor most of the other 169 ILO conventions.

consensus of the world community accepting the principle of national sovereignty and the primacy of territorial jurisdiction even within the context of the important and fundamental commitment to nondiscrimination in employment. As a party to the Convention, Saudi Arabia has expressed its agreement with these principles and entered into an undertaking to abide by widely accepted standards against discrimination within the context of its national policy.

As further evidence of customary international law, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 17 I.L.M. 422 (1978), demonstrates equal respect for standards of nondiscrimination and principles of sovereignty. The Declaration states:

> All governments should pursue policies designed to promote equality of opportunity and treatment in employment, with a view to eliminating any discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin.

Id., para. 21, at 426. Yet,

> All the parties concerned by this Declaration should respect the sovereign rights of States, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards.

Id., para. 8, at 424.

The Organization for Economic Cooperation and Development ("OECD")[10] has developed a code of conduct

[10] The purpose of the OECD is to promote policies designed to achieve high economic growth and employment, to contribute to world economic development, and to contribute to the expansion of world trade on a multilateral nondiscriminatory basis. The United States is a member of the OECD; Saudi Arabia is not.

for multinational enterprises—the OECD *Guidelines for Multinational Enterprises*, 15 I.L.M. 969 (1976) [hereinafter Guidelines]. These Guidelines reflect a dual concern for the sovereignty of nations and equality in employment. According to the OECD Guidelines, multinational enterprises are to respect the rights of employees and to ensure employment standards "not less favourable than those observed by comparable employers in the host country." *Id.* at 975. But these protections are to be realized "within the framework of law, regulations and *prevailing labour relations and employment practices, in each of the countries in which they operate. . . .*" *Id.* (emphasis added). The Guidelines, to which the United States subscribes, underscore the importance of sovereignty by acknowledging:

> Every State has the right to prescribe the conditions under which multinational enterprises operate within its national jurisdiction, subject to international law and to the international agreements to which it has subscribed. The entities of a multinational enterprise located in various countries are subject to the laws of these countries.

Id. at 970.

Concerned with the potential for conflict between laws that might be applied extraterritorially, a 1984 report of the OECD counselled cooperation in avoiding such conflict. OECD, *The OECD Guidelines for Multinational Enterprises* 75 (1986) (publication of the OECD). It urged Member states contemplating "action under existing legislation or other exercise of jurisdiction which may conflict with the legal requirements or established policies of another Member country and lead to conflicting requirements being imposed on multinational enterprises . . . [to] [h]ave regard to relevant principles of international law . . . [and] [t]ake fully into account the sovereignty and legitimate economic, law enforcement and other interests of other Member countries." *Id.*

at 75. To this end, the report urges cooperation rather than unilateral action. *Id.*[11]

In sum, these international conventions, declarations, and codes acknowledge the obligation of all nations to adopt standards of nondiscrimination, yet recognize that this process must be undertaken with respect for the sovereignty of individual nations and within the context of each nation's laws and policies.[12] Far from justifying extraterritorial application of domestic legislation, they seek to implement international norms within the ambit of domestic legislation of individual states. Increasing transnational circulation of goods, capital and labor has not led to a decline of concern for sovereignty, but rather has emphasized its significance in international law. The extraterritorial application of Title VII would transgress both the international consensus and the sovereignty of individual states.

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[11] Additionally, the latest proposed draft text of the United Nations Code of Conduct on Transnational Corporations (prepared by the Chairman of the Special Session on the Code of Conduct and dated May 31, 1990) echoes the concern for national sovereignty under international law: "An entity of a transnational corporation is subject to the laws, regulations and established administrative practices of the country *in which it operates*." Art. 8 (emphasis added). *See also* art. 14.

[12] In an area as important as the condemnation of torture, the Senate has expressed its intent that the international consensus be implemented in the context of U.S. domestic laws and policies. To this end, when giving its advice and consent to ratification of the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1985), the United States Senate included an express reservation that the Convention would not "restrict or prohibit the United States from applying the death penalty consistent with the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States." 136 Cong. Rec. S17492 (daily ed. Oct. 27, 1990). The recent instance of U.S. legislative action reflects our own government's continuing respect for national sovereignty.

D. Employment is Precisely the Type of Local Activity that States do not Regulate Extraterritorially, Even as to Their Nationals Employed in Foreign Countries

The practice of states is a primary source of customary international law. Restatement 3d § 102(2), at 24. The "practice of states" includes "diplomatic acts and instructions as well as public measures and other governmental acts and official statements of policy. . . ." *Id.*, comment b, at 25.

As reflected in domestic laws, the prevailing practice is to regulate employment discrimination pursuant to the territoriality principle of jurisdiction, even as to nationals employed abroad. The International Labour Organization lists 55 nations that have employment discrimination laws. International Labour Office, *Legislative Series, General Subject Index 1919-88* (1988). Rather than applying extraterritorially, many of these statutes expressly provide that they apply only within the territory of the regulating state. For example, the Race Relations Act and the Sex Discrimination Act of the United Kingdom expressly apply only to employment "at an establishment in Great Britain." Appendix A.[13]

In addition, a number of laws assert that the employment law of the territorial state is to be exclusive within its territorial boundaries. *See* F. Morgenstern, *International Conflicts of Labour Law* 34-35 (1984) (discussing, *inter alia*, territorial exclusivity of Argentine, Ecuadoran, Iraqi, Brazilian, and Mexican labor legislation). Most relevant for the Court's consideration in this case is the Saudi Arabian Labor and Workmen Law of 1969, which claims exclusive jurisdiction over all labor relations and disputes within Saudi Arabia. *See* appendix B, arts. 2, 174, 176.

[13] Similar legislation from Argentina, Gabon, India, Jamaica, Norway, and Spain is included in appendix A.

Moreover, courts of a number of states have applied their domestic discrimination laws only to conduct within the regulating state. In interpreting the U.K. Sex Discrimination Act, a British court has rejected the claim that the statute applied to conduct occurring in the channel between England and the European continent on a ship registered in Hamburg but owned by an English company. *Haughton v. Olau Line, Ltd.*, [1986] W.L.R. 504 (Ct. App. Mar. 7, 1986). The Australian courts have held that Australian labor laws apply only to activities substantially connected with Australian territory. *See Regina v. Foster*, 103 C.L.R. 256, 275 (Austl. 1959). The European Court of Justice has held that the European Communities' rules against discrimination apply only to activities within the member states. *See Walrave v. Association Union Cycliste Internationale*, Case No. 36/74, 1975 Common Mkt. Rep. (CCH) ¶ 8290 (Dec. 12, 1974).[14]

Thus, absent a clear congressional mandate, it would be contrary to accepted state practice for the EEOC or the courts to extend the scope of Title VII to activities outside the United States and within the territory of another sovereign nation.[15]

[14] The English texts of these foreign cases have been lodged with the Clerk of the Court.

[15] Given the absence of a clear Congressional mandate in this case, *amicus* Lawyers' Committee has sought to rely on the U.S. government's concern for its image among the world community as a basis for extending Title VII abroad. *See* Brief of Lawyers' Committee for Civil Rights Under Law, at 12 (characterizing Title VII as part of "a fundamental moral commitment by this Nation . . . repeatedly linked . . . to the international standing and relations of the United States."). However, the failure of the United States to ratify either the ILO Convention No. 111 or any of the United Nations human rights instruments relating to discrimination, *see Human Rights—Status of International Instruments* at 12-13, U.N. Doc. ST/HR/5, U.N. Sales No. E.87.XIV.2 (1990), seriously undermines the Lawyers' Committee's analysis.

II. ACCORDING TO ESTABLISHED PRINCIPLES OF INTERNATIONAL LAW, IT WOULD BE UNREASONABLE TO APPLY TITLE VII TO CONDUCT IN FOREIGN COUNTRIES

A. International Law Requires "Reasonableness" in Extraterritorial Assertions of Jurisdiction

Extraterritorial application of domestic laws—in particular by the United States—has bred resentment from other governments and, in some cases, spawned the enactment of foreign blocking statutes.[16] The principle of reasonableness has been adopted to govern the authority

[16] For example, the proposed Omnibus Export Amendments Act of 1990, H. Rep. No. 101-944, 101st Cong., 2d Sess., § 128 (1990), would have imposed restrictions on foreign subsidiaries of U.S. companies trading with Cuba. The Canadian government, which allows trade with Cuba, issued a blocking order demonstrating Canada's "determination to block measures that infringe Canadian sovereignty." Washington Post, Nov. 1, 1990, at F1. Under pressure from various countries, including Canada and the United Kingdom, President Bush vetoed the bill. 7 Int'l Trade Rep. 1770 (Nov. 21, 1990).

For other examples, *see also* Restatement 3d § 403, at 248-49 (Reporters' Note 1) (various state objections reflect the view that jurisdiction must be interpreted and applied *reasonably*); *id.* § 442, at 357-59 (Reporters' Note 4) (discussing blocking statutes enacted by Canada, the Netherlands, Great Britain, the Federal Republic of Germany, France, Norway, Australia, and South Africa "to counter litigation or investigation emanating from the United States"); Gordon, *Extraterritorial Application of United States Economic Laws: Britain Draws the Line*, 14 Int'l Law. 151 (1980).

Foreign courts have also reacted negatively to U.S. assertions of extraterritorial jurisdiction. *See, e.g., Libyan Arab Foreign Bank v. Bankers Trust Co.*, High Court of Justice, Queen's Bench, Commercial Court (Sept. 2, 1987) (U.K. court orders U.K. branch of U.S. bank to make payment to Libyan bank despite U.S. law prohibiting payment, characterizing transaction as one governed by British, not U.S., law); *Compagnie Européenne des Pétroles S.A. v. Sensor Nederland B.V.*, Judgment of Sept. 17, 1982, District Court at the Hague, *reprinted in* 22 I.L.M. 66, 71-72 (1983) (Dutch court characterizes U.S. Soviet pipeline regulations as a "restraint of trade," and concludes that U.S. assertion of jurisdiction over U.S. foreign subsidiary is "dubious").

of states to apply their domestic laws to conduct occurring abroad so as to accommodate the conflicting interests of states as well as affected private interests. Restatement 3d §§ 401, at 231 (Introductory Note), 403, at 244-48.

This principle is recognized through various judicial decisions in United States law and has emerged as a principle of international law as well. *Id.* § 403, comment a, at 245; *Société Nationale Industrielle Aérospatiale v. United States District Court*, 482 U.S. 522, 544-45 n.29 (1987) (in the context of discovery of documents located abroad, the Court held that U.S. law should be applied " 'consistent with the overall principle of reasonableness in the exercise of jurisdiction' ") (quoting Revised Restatement Draft No. 7 § 437, at 42 (Reporters' Note 5)). *Cf. Lauritzen v. Larsen*, 345 U.S. 571 (1953).

B. Application of Title VII Abroad in this Case Would be Unreasonable

Whether it is reasonable for the United States to exercise extraterritorial jurisdiction based on the nationality principle is to be evaluated considering the following non-inclusive list of factors:

(a) the link of the activity to the territory of the regulating state, *i.e.*, the extent to which the activity takes place within the territory, or has substantial, direct, and foreseeable effect upon or in the territory;

(b) the connections, such as nationality, residence, or economic activity, between the regulating state and the person principally responsible for the activity to be regulated, or between that state and those whom the regulation is designed to protect;

(c) the character of the activity to be regulated, the importance of regulation to the regulating state, the extent to which other states regulate such

activities, and the degree to which the desirability of such regulation is generally accepted;

(d) the existence of justified expectations that might be protected or hurt by the regulation in question;

(e) the importance of the regulation to the international political, legal, or economic system;

(f) the extent to which the regulation is consistent with the traditions of the international system;

(g) the extent to which another state may have an interest in regulating the activity; and

(h) the likelihood of conflict with the regulation by another state.

Restatement 3d § 403(2), at 244-45. A consideration of these factors in the context of the instant case demonstrates that the extension of Title VII to a U.S. employer's activities occurring within the territory of another regulating state would be unreasonable.

The territorial links with the United States are weak in this case since none of the activity to be regulated occurred within the United States nor did the alleged unlawful conduct have a substantial, direct, and foreseeable effect in the territory of the United States. As courts have recognized in interpreting similar inquiries under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1332, 1391, 1441, 1602-1611 (1988), activity affecting a U.S. citizen abroad does *not* have an effect in the United States. *See Callejo v. Bancomer, S.A.*, 764 F.2d 1101, 1111 (5th Cir. 1985); *Harris v. VAO Intourist Moscow*, 481 F. Supp. 1056 (E.D.N.Y. 1979); *Upton v. Iran*, 459 F. Supp. 264 (D.D.C. 1978), *aff'd mem.*, 607 F.2d 494 (D.C. Cir. 1979). Accordingly, consideration of the first factor of Section 403(2)(a) indicates it would be unreasonable to apply Title VII abroad.

In addition, there is an insufficient connection between the United States and the parties in this case to make

U.S. exercise of jurisdiction reasonable. In considering the link between the regulating state and the enterprise responsible for the activity, this factor requires more than a simple place-of-incorporation test. Rather, the overall "connections," including economic activity, should be considered. Aramco's incorporation in Delaware is a minor connection compared to other more significant considerations. At the time of the alleged conduct, Aramco's principal place of business and headquarters were in Dhahran, Saudi Arabia. All of Aramco's installations and operations were in Saudi Arabia. Its employees were predominantly Saudi nationals and other non-U.S. citizens. Because Aramco was charged by the Saudi government with development of the country's most important economic resource, the Saudi government closely monitored the planning and operations of Aramco. Thus, the connections between Saudi Arabia and Aramco were much stronger than the nominal connection between the United States and Aramco.

As for the connections between the regulating state and the person whom the regulations are designed to protect, petitioner Boureslan's U.S. citizenship is admittedly a primary factor to be considered. During the relevant time period, however, petitioner Boureslan's residency and all economic activity were in Saudi Arabia. Moreover, Saudi Arabia has had an antidiscrimination in employment law and procedure available to the petitioner,[17] which, *amici* contend, strengthens the connection between petitioner Boureslan and Saudi Arabia in this case.

The third factor also leads to the conclusion that the extraterritorial application of Title VII would be unreasonable. The character of the activity to be regulated—the relationship between an employer and its employee—is precisely the type of activity that generally, and in this instance specifically, is regulated exclusively by the host

[17] *See* discussion of conflict with Saudi law, *infra*, note 21 and accompanying text.

or territorial state. A state should not generally exercise extraterritorial jurisdiction "over *predominantly local activities*, such as industrial and *labor relations*, health and safety practices, or conduct related to preservation or control of the local environment." Restatement 3d § 414, comment c, at 271 (emphasis added).

As to the importance of such regulation, it is clearly an important U.S. policy to prohibit discrimination in employment. Yet, there is no clear statement in the text of Title VII or in its legislative history that Congress was concerned with such conduct abroad. As noted earlier, the U.S. government, as an OECD member, has endorsed the primacy of local law in this area. When Congress has intended to provide for extraterritorial application of U.S. law, as for example in the regulation of labor practices of American owned or controlled entities in South Africa, the statutory language has been clear and the legislative history unambiguous.[18]

As noted earlier, the practice of states is not to apply employment laws extraterritorially to their nationals. Documents reflecting the international consensus with regard to multinational enterprises and employment discrimination avoid extraterritorial application of employment laws in deference to the laws of the host or territorial country. *See* section I(D), *supra*. To do otherwise would require enterprises, such as Aramco, to ascertain and apply the laws of as many countries as are represented in their work forces.[19]

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[18] In the Comprehensive Anti-Apartheid Act of 1986, Congress expressly required U.S. nationals and companies employing more than 25 persons *in South Africa* to implement the Code of Conduct which included various principles of non-discrimination. Comprehensive Anti-Apartheid Act of 1986, Pub. L. No. 99-440, § 208, 100 Stat. 1087, 1097 (to be codified at 22 U.S.C. § 5035).

[19] In the case of Aramco's operations in Saudi Arabia, Aramco could have been subject to the employment discrimination laws of at least Saudi Arabia, the United States, the Philippines, the United

As for the existence of justified expectations, the silence of Congress on this issue provides no basis on which employees could expect that Title VII would apply to their employment abroad. In fact, for 10 years, the EEOC regulations extended Title VII solely to "all individuals, both citizen and noncitizens, domiciled or residing *in the United States*. . . ." 29 C.F.R. § 1606.1(c) (1971-1980) (emphasis added). Given the general practice of states to regulate the employer-employee on a territorial and often exclusive basis, employees cannot expect to carry their domestic employment discrimination laws with them when they work abroad.

The international agreements and guidelines discussed in section I(C), *supra*, and the prevalence of domestic laws regulating this issue indicate that eliminating discrimination in employment is an important international objective. As noted earlier, however, this objective is to be achieved in the context of regulation by the territorial state. The multilateral agreements in this area recognize and accept the differences among states that otherwise adhere to the generally accepted standards of nondiscrimination.

The political consensus reflected in Title VII is an American consensus and is not necessarily reflective of any other nation's political or social consensus on this aspect of labor relations. Indeed, some nations provide more extensive protection to employees. For instance, Canada prohibits discrimination on the basis of dependence on alcohol or drugs, race, national/ethnic origin, color, religion, age, sex, pregnancy/childbirth, marital status, criminal conviction, mental or physical disability, and family status. *See* Can. Lab. L. Rep. ¶ 1600 at 901-3 (CCH Canadian Ltd., 1987).[20]

Kingdom, the Netherlands, Canada, Jordan, Egypt, India, Pakistan, Sri Lanka, and Syria.

[20] This material has been lodged with the Clerk of the Court.

The extraterritorial application of Title VII would burden the international legal system by encroaching on individual nations' implementation of this international consensus. In addition, the extraterritorial application of Title VII would burden the international economic system by creating, within each foreign affiliate of a multinational enterprise that had employees of diverse citizenship, conflicting administrative and legal burdens. Thus, it is important to the international political, legal and economic system that Title VII *not* be applied in a unilateral and extraterritorial fashion.

With respect to the sixth factor, the extraterritorial application of Title VII would not be consistent with the traditions of the international legal system. As stated above, labor relations have been regarded as primarily a matter of local concern. Restatement 3d § 414, comment c, at 271. As discussed in section I(D), *supra*, the tradition is not to apply employment discrimination laws to conduct in another state. Thus, consideration of the tradition of the international legal system indicates that Title VII should not be construed to apply abroad.

Domestic employment discrimination laws demonstrate that most states clearly have an interest in regulating such matters within their territories. U.S. employment discrimination laws generally apply to U.S. and non-U.S. citizens working in the United States. *See, e.g., Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176 (1982). Saudi Arabia has a similar interest in regulating labor relations and employment activity within its borders. The extensive Saudi Arabian Labor and Workmen Law of 1969 occupies the field of employment in Saudi Arabia. It stipulates as its goal to develop and modernize the Saudi economy and to protect the integrity of the religious, moral, and social fabric of the society. It regulates all employment in Saudi Arabia including "any contract under which any person undertakes to work for the account of an employer . . . in consideration of a wage."

Art. 2. The extensive requirements of this law govern all aspects of the employment relationship between any employer and employee in Saudi Arabia. Therefore, the Saudi government's interest in this area of law has been made manifestly paramount.

Extraterritorial application of Title VII could conflict with several provisions of the Saudi Labor and Workmen Law of 1969. For example, the kind of work women may or may not perform and which hours they may work are strictly regulated to "protect" them from "hazardous" or "harmful" industries and nighttime workshifts. Arts. 160, 161. The provisions regarding maternity leave grant benefits far beyond those guaranteed by U.S. law. Arts. 160-62. The termination and complaint procedures in Saudi Arabia are quite different from Title VII. Saudi Arabian law establishes specific pre-conditions for discharge including "valid reason" and notice. The law provides for indemnity for wrongful discharge and for termination awards. Arts. 74, 83.

Finally, and of primary importance in the instant case, the extraterritorial application of Title VII would conflict with the provision of Saudi law giving it exclusive jurisdiction over all labor matters in Saudi Arabia. Art. 2. Exclusive jurisdiction over all labor disputes is explicitly reserved to Saudi "Labor and Settlement of Disputes Commissions" constituted by the Council of Ministers. Arts. 174, 176. Saudi Arabia's claim to exclusive jurisdiction over the resolution of all labor disputes within Saudi territory demonstrates an apparent policy that labor relationships are governed by Saudi local law.[21]

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[21] There is no indication that petitioner Boureslan pursued the remedies available to him under Saudi law prior to bringing an action against respondents in U.S. courts. Coupled with Saudi Arabia's adherence to international standards, as set forth in the ILO Convention (*see* discussion, section I(D), *supra*), it cannot be said that an appropriate remedy would not have been available to him under the law of the territorial state.

III. THE DOCTRINE OF COMITY AMONG STATES CALLS FOR RESTRAINT IN THIS INSTANCE

Comity among nations precludes finding that Title VII should be applied in the circumstances of this case. Restatement 3d § 403(3), at 245, provides:

> When it would not be unreasonable for each of two states to exercise jurisdiction over a person or activity, but the prescriptions by the two states are in conflict, each state has an obligation to evaluate its own as well as the other state's interest in exercising jurisdiction in light of all the relevant factors, [including those set out in] Subsection (2); a state should defer to the other state if that state's interest is clearly greater.

The balancing of interests called for in Restatement 3d § 403(3) reflects principles of comity under international law. *See* Maier, *Resolving Extraterritorial Conflicts, or "There and Back Again,"* 25 Va. J. Int'l L. 7 (1984); Yntema, *The Comity Doctrine*, 65 Mich. L. Rev. 9 (1966); *Société Nationale Industrielle Aérospatiale*, 482 U.S. at 541-46 (considering comity concerns in dispute regarding discovery of documents located abroad).

In this case, an evaluation of the competing interests of the two states using the factors set out in Restatement 3d § 403(2) leads to the conclusion that the interests of Saudi Arabia as the territorial state are "clearly greater" than those of the United States. To conclude that the United States has a lesser interest in no way implies that its interest is not significant. Rather, it indicates that, along with the substantial interest of the United States in the values underlying Title VII, this country has equally strong countervailing interests in demonstrating its respect for sovereignty, international law, and avoiding conflict. In these circumstances, the United States should defer to Saudi Arabia's clearly greater interests.

CONCLUSION

For the foregoing reasons, the decision of the Fifth Circuit should be affirmed.

Respectfully submitted,

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APPENDICES

APPENDIX A

Excerpts from selected foreign statutes governing employment discrimination.

ARGENTINA

Decree No. 390, to approve a consolidated text of the rules governing contracts of employment. Dated 13 May 1976. (*Boletin Oficial*, 21 May 1976, No. 23410, p. 2), *reprinted in* ILO, *Legislative Series* 1976-Arg. 1 (1978).

Art. 3. *Cases in which the Act is applicable.* This Act shall apply to all matters relating to the legal capacity, rights and obligations of the parties, regardless of whether the contract of employment was concluded in Argentina or abroad, *on condition that it is performed in Argentina* (emphasis added).

Art. 17. *Discrimination prohibited.* This Act prohibits any form of discrimination between workers on grounds of sex, race, nationality, religion, political opinion, trade union membership or age.

GABON

Act No. 5-78, to institute a new Labour Code for the Gabonese Republic. Dated 1 June 1978. (*Journal Officiel*, 28 November 1978, No. 25, Extraordiary, p. 1), *reprinted in* ILO, *Legislative Series* 1978-Gab. 1 (1980).

Art. 7. The State shall guarantee equal wages for the same work or for work of equal value, without discrimination based upon nationality, sex or place of recruitment.

Art. 21. Irrespective of the place where a contract of employment is concluded and of the place where either of the parties is resident, *every contract of employment concluded for performance either wholly or in part in the territory of the Gabonese Republic shall be subject to the*

provisions of this Code: Provided that the foregoing shall not apply to workers brought to Gabon for temporary employment not exceeding three months (emphasis added).

INDIA

An Act to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto. No. 25 of 1976. Assented to 11 February 1976. (*Gazette of India*, Extraordinary, Part II, Section 1, No. 29, 12 February 1976, p. 189), *reprinted in* ILO, *Legislative Series* 1976-Ind. 1 (1977).

Art. 1. Short title, extent and commencement. (1) This Act may be called the Equal Remuneration Act of 1976.

Art. 2. *It extends to the whole of India* (emphasis added).

Art. 4. Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature.

Art. 5. No discrimination to be made while recruiting men and women workers.

JAMAICA

An Act to eliminate discrimination between the sexes in the payment of remuneration for the doing of similar work and to provide for matters incidental thereto. No. 34 of 1975. Assented to 2 October 1975. *Reprinted in* ILO, *Legislative Series* 1975-Jam. 2 (1976).

Art. 1. *Short title and commencement.* This Act may be cited as the Employment (Equal Pay for Men and Women) Act of 1975.

Art. 3. *A person shall not be regarded for the purposes of this Act as employed in Jamaica if his employ-*

ment is wholly or mainly outside Jamaica (emphasis added); but

(a) employment on aircraft or hovercraft registered in Jamaica shall not be regarded for the purposes of this Act as employment outside Jamaica, unless it is wholly outside Jamaica;

(b) persons employed to work on board a ship registered in Jamaica, unless the employment is wholly outside Jamaica, are to be regarded for the purposes of this Act as employed in an establishment.

Art. 3. *Payment of equal pay for equal work.* (1) From and after the first day of January 1976 no employer shall, by failing to pay equal pay for equal work, discriminate between male and female employees employed by him in the same establishment *in Jamaica* (emphasis added).

NORWAY

Act respecting equality between the sexes. No. 45, Dated 9 June 1978. (*Norsk Lovtidend*, Part 1, 27 June 1978, No. 18, p. 395), *reprinted in* ILO, *Legislative Series* 1978-Nor. 1 (1979).

Art. 1. *Purpose of the Act.* This Act is intended to promote equality between the sexes and is specially aimed at improving the status of women.

The public authorities shall arrange for conditions ensuring equality between the sexes in all spheres of public life.

Women and men shall be afforded equal opportunities for training, employment and cultural and vocational development.

Art. 3. *General provisions.* Discrimination between women and men shall not be permitted.

The expression "discrimination" means any act placing women and men on a different footing because they

are of different sexes. It shall also be deemed to include any act whose practical effect is such that one sex is unreasonably placed at a disadvantage in relation to the other. . . .

Art. 5. *Equal wages for work of equal value.* Women and men engaged in the same activity shall have equal wages for work of equal value.

Art. 20. *Geographical scope of the Act.* This Act shall apply in Norway and Svalbard and on board Norwegian vessels and aircraft *in all spheres that are not subject to the sovereignty of any State* (emphasis added).

SPAIN

Act No. 8, to promulgate a Worker's Charter. Dated 10 March 1980. (*Boletin Oficial del Estado*, 14 March 1980, No. 64, p. 5799), *reprinted in* ILO, *Legislative Series* 1980-Sp. 1 (1981).

Art. 2. As a party to an employment relationship a worker shall have the right—

(c) to freedom from discrimination, when seeking employment or after having found employment, on grounds of sex, marital status, age (within the limits specified in this Act), race, social circumstances, religious or political ideas, membership or non-membership of a trade union, or language, *within the Spanish State* (emphasis added).

A worker shall likewise not be subject to discrimination on grounds of physical, mental or sensory handicap, if he has the necessary skills to do the job or engage in the employment in question . . . .

UNITED KINGDOM

The Race Relations Act 1976 (1976 c. 74).

Discrimination by employers

Art. 4. Discrimination against applicants and employees

(1) It is unlawful for a person, in relation to employment by him *at an establishment in Great Britain* (emphasis added), to discriminate against another . . .

(2) It is unlawful for a person, in the case of a person employed by him *at an establishment in Great Britain* (emphasis added), to discriminate against that employee . . .

The Sex Discrimination Act 1975 (1975 c. 65).

Discrimination by employers

Art. 6. Discrimination against applicants and employees

(1) It is unlawful for a person, in relation to employment by him *at an establishment in Great Britain* (emphasis added), to discriminate against women . . .

(2) It is unlawful for a person, in the case of a woman employed by him *at an establishment in Great Britain* (emphasis added), to discriminate against her . . .

APPENDIX B

Selected provisions from the Saudi Arabian Labor and Workmen Law of 1969. The complete text in English is at Attachment B to Respondent Aramco's brief in the Fifth Circuit.

ARTICLE 2

The provisions of this Law shall apply to:

(a) Any contract under which any person undertakes to work for the account of an employer under the latter's direction or control in consideration of a wage.

(b) Contracts of apprenticeship (Industrial indentures).

(c) Workmen of the Government, local authorities, charitable institutions, and public organizations.

ARTICLE 74

If the contract is cancelled for no valid reason, the party who is prejudiced by such cancellation shall be entitled to an indemnity to be assessed by the competent Commission, provided that such assessment shall take into account actual and contingent material and moral prejudice suffered by such party. . . .

ARTICLE 83

The employer may not cancel the contract without termination award, advance notice or indemnity except in the following cases, and provided that he gives the workman a chance to state his reasons for objecting to the cancellation:

1. If, during or by reason of the work, the workman has committed an assault against the employer or against any of his supervisors.

2. If the workman fails to fulfill the essential obligations arising from the labor contract, or to obey legitimate orders, or if, in spite of being warned, in writing, he deliberately fails to observe the instructions posted by the employer in a conspicuous place for the safety of the work and workmen.

3. If the workman is proved to have adopted a bad conduct or to have committed an act affecting honesty or honor.

4. If the workman has deliberately committed any act or negligence with intent to cause material loss to the employer, provided that the latter shall report the incident to the appropriate authorities within twenty-four hours from the time of its coming to his knowledge.

5. If it is proved that the workman had resorted to forgery in order to obtain the job.

6. If the workman is hired on probation.

7. If the workman absents himself without valid reason for more than twenty days in one year or for more than ten consecutive days, provided that discharge shall be preceded by a warning in writing by the employer to the workman after ten days' absence in the first case and five days' absence in the second.

8. If it is proved that, without permission from the person supervising his treatment, the workman has left the hospital or any place provided for his treatment. This shall not prejudice his right to such compensation as he is entitled to under the provisions on injuries and compensations set forth in the Social Insurance Law.

9. If it is proved that the workman has divulged the industrial and commercial secrets of the work in which he is engaged.

ARTICLE 160

Adolescents, juveniles and women may not be employed in hazardous operations or harmful industries, such as power-operated machinery, mines, quarries and the like. The Minister of Labor shall, by decision, designate the occupations and operations that are regarded as harmful to health, or are apt to expose women, juveniles and adolescents to given hazards requiring that their employment in such occupations or operations be prohibited or restricted by special conditions. In no case may men and women commingle in the place of work or in the accessory facilities or other appurtenances thereto.

ARTICLE 161

Adolescents, juveniles and women may not be employed during the night time which covers an interval of at least eleven hours between sunset and sunrise, except in the cases to be determined by decision of the Minister of Labor in respect of non-industrial occupations and in cases of force majeure.

ARTICLE 162

Juveniles and adolescents may not be employed for a period exceeding six hours a day, and the exceptions provided for in Articles 150 and 152 of this Law shall not apply to them.

ARTICLE 174

The Primary Commission for Settlement of Disputes shall have exclusive jurisdiction to:

First, Render final decisions on:

a. Labor disputes, the value of which does not exceed three thousand riyals.

b. Disputes relating to the stay of execution of decisions to terminate workmen, which are filed in accordance with the provisions of this Law.

c. Disputes relating to the imposition of fines or requests for exemption from such fines.

Second: Render decisions of first instance on:

a. Labor disputes, the value of which exceeds three thousand riyals.

b. Disputes pertaining to Labor injuries whatever the amount involved may be.

c. Disputes pertaining to termination of service.

ARTICLE 176

The Supreme Commission shall have exclusive jurisdiction to render final and definitive decisions in all disputes referred to it on appeal and shall likewise be competent to impose upon the violators of the provisions of this Law the penalties prescribed herein.